

PREVAILING WAGE ORDINANCE

HOOPA VALLEY TRIBE

TITLE 66

ORDINANCE NO: 02-01

DATE APPROVED: March 7, 2002

SUBJECT: REQUIRING THE PAYMENT OF PREVAILING WAGES ON CERTAIN CONTRACTS WITH THE TRIBE OR TRIBAL HOUSING ENTITY ON THE HOOPA VALLEY INDIAN RESERVATION

WHEREAS The Hoopa Valley Tribe, adopted a Constitution and Bylaws on June 20, 1972, approved by the Commissioner of Indian Affairs on August 18, 1972, and amended from time to time which was ratified and confirmed by Congress, **25 U.S.C. 1300i-7, PL 100-580 §8 [1988]**, and

WHEREAS Article V of the Hoopa Valley Tribe Constitution and Bylaws establishes the Hoopa Valley Tribal Council as the governing body of the Hoopa Valley Tribe, and

WHEREAS The Hoopa Valley Tribe desires to establish a prevailing wage for laborers, mechanics and other positions which may be designated by the Federal Government or the Tribe on the Hoopa Valley Indian Reservation in order to promote the general welfare and economic development of the Tribe on the Hoopa Valley Indian Reservation in exercise of the Tribe's inherent authority and Congressionally delegated authority, and

WHEREAS **25 United States Code Section 4114 (b)(3)** expressly provides that the determination of prevailing wages by an Indian Tribe supercedes prevailing wage determinations of the Secretary and the Davis-Bacon Act **40 United States Code Section 276a et seq.** and upon passage of this Ordinance the Tribally determined prevailing wage shall be applied to contracts or agreements including contracts and agreements for assistance, sale or lease pursuant to **25 United States Code Chapter 43, Sections 4101 et seq.** known as the Native American Housing Assistance and Self Determination Act.

WHEREAS The prevailing wages established by the Tribe under this Ordinance are intended to supercede all Federal wage determinations to the greatest extent allowed under Federal Law and to the fullest legal authority of Tribal Law.

NOW THEREFORE BE IT RESOLVED that the Hoopa Valley Tribal Council enacts the following Ordinance to provide for prevailing wages to be determined and paid pursuant to agreements to be performed in the area of operation of the Hoopa Valley Tribe and Hoopa Valley Housing Authority.

Section 1. TITLE

This Ordinance shall be known as the “Hoopa Valley Tribe Prevailing Wage Ordinance.”

Section 2. DEFINITIONS

2.01 “Acts” shall mean any United States Federal Act containing requirements for establishment and payment of a determined prevailing wage, including but not limited to wage determinations of the Secretary or wage determinations set under the Davis-Bacon Act **40 United States Code Section 276a et seq** applicable to Indian Tribes.

2.02 “Agreement” shall include any contract or agreement for assistance, sale or lease funded under any United States Act applicable to Indian Tribes and specifically including the Native American Housing Assistance and Self-Determination Act of 1996, as amended, **Pub.L. 104-330, 25 U.S.C. § 4101 et seq.** and such other Tribal agreements as may be determined by Council to be appropriate.

2.03 “HVHA” shall mean the Hoopa Valley Housing Authority, the Hoopa Valley Tribe’s designated housing entity.

2.04 “Prevailing Wage” shall mean the wages as determined by the Tribe prevailing on the Tribe’s Reservation and within the Tribe’s and HVHA’s area of operations for each category of employee including, but not limited to, architect, technical engineer, draftsman, technician, laborer, and mechanic.

2.05 “Tribe” shall mean the Hoopa Valley Tribe.

2.06 “Council” shall mean the Hoopa Valley Tribal Council.

Section 3. Payment of Prevailing Wages Required.

3.01 Payment Required in Agreements. Any Agreement pursuant to Acts with the Tribe or any of its Departments or entities for construction, alteration, repair or maintenance of buildings or works or for provision of labor to be performed within the area of operation of Tribe or HVHA shall contain a provision requiring not less than Prevailing Wages as set pursuant to this Ordinance shall be paid by the contractor. Agreements not pursuant to Acts are exempt from this requirement unless Council in its discretions requires payment of determined prevailing wages.

3.02 Volunteers. Prevailing wages under this Ordinance shall not apply to any individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered. No individual currently employed under an agreement for the

same or similar services on a project shall be considered a volunteer on the same project.

Section 4. Determination of Tribal Prevailing Wage

4.01 Tribe to Conduct Wage Survey. Not less frequently than biennially the Tribe shall arrange for a wage survey to be conducted in order to determine the Prevailing Wage.

- a. The Tribe shall obtain wage rates from available sources of each class of profession or trade included in the survey and shall establish the Prevailing Wage at not less than the average wage paid to each class of profession or trade included in the survey. The survey shall also include the classification for trainee in all trades.
- b. The Tribe shall retain for not less than three years the names and addresses of all sources contacted and the wage rates reported by each source.
- c. Wage rates shall include salary but not the value of benefits paid to or on behalf of the employees.
- d. The results of the survey and the prevailing wage shall be contained in a schedule of Prevailing Wages which shall list each covered class of profession, trade and trainees and the hourly rate for each and the effective dates of the schedule.
- e. In the years the Tribe does not conduct a survey, the wage rates shall be adjusted pursuant to the published rise in the Cost of Living Index for the area.

4.02 Delegation of Authority. The Tribe may delegate its authority to conduct surveys and/or to establish the Tribal Prevailing Wage under this Ordinance to an agent or agency of the Tribe, including, but not limited to the Tribal Employment Rights Organization or HVHA but Council shall approve the Schedule of Prevailing Wages at least annually by Motion or Resolution.

Section 5. Employer Requirements.

5.01 Payment of Prevailing Wages and Access to Records. Each employer, including the Tribe, its Departments and entities, when performing under an agreement pursuant to Acts or an agreement designated by Council, shall pay prevailing wages, and shall maintain certified payroll records reporting the hourly rates paid each employee. The certified payroll records shall be available for

inspection and copying during regular office hours by the employee. Any employee shall be entitled to inspect and copy his or her certified payroll record.

5.02 Schedule to be Provided. The Tribe shall provide every employer at the time bids or proposals are solicited with a copy of the currently effective Schedule of Prevailing Wages.

5.03 Post of Wage Schedules. At all times while performing under an Agreement pursuant to Acts, or agreement designated by Council, each employer shall post at the job site and in its principal office a copy of the Schedule of Prevailing Wages furnished by the Tribe.

Section 6. Tribal Court Action and Remedies

6.01 Agreements and Penalties Each Agreement pursuant to Acts, or agreements designated by Council shall contain a provision stating the penalties for failure to pay Tribally Determined Prevailing Wages (“Wage Penalty”) or for failing to maintain records (Records Penalty). The Wage Penalty shall be calculated by determining the difference between the amount the employee was actually paid under the agreement and the amount the employee was entitled to under this Ordinance and multiplying the sum by two (for example: employee is paid \$10.00/hour for eight hours for a total sum of \$80.00, employee is entitled to \$15.00/hour under this Ordinance for eight hours for a total sum of \$120.00; \$120 minus \$80.00 equals \$40.00; \$40.00 times two equals \$80.00 total Wage Penalty to be paid to employee). The Records Penalty of \$500 per day not to exceed a total of \$10,000.00 or 15% of the total agreement value whichever is greater shall be imposed on an employer for each day an employer fails to maintain or allow the Tribe, its Departments and entities, or an employee to inspect certified payroll records as required by this Ordinance or fails to provide a copy of such record within five work days of a written request (“Records Penalty”).

6.02 Tribal Court Action The Tribe, its departments and entities and any adversely affected employee may bring an action in the Hoopa Valley Tribal Court against any employer to recover the amount of the Wage Penalty required under this Ordinance plus 10% per annum interest from the date a lawsuit is filed and/or the Records Penalty for failure to maintain, allow inspection or to provide copies of certified payroll records. In addition, in any such action, the Tribe, its departments or entities or the employee shall be entitled to recover from the employer reasonable attorneys fees in addition to his or her other costs of suit.

6.03 Limitation of Actions No action under this Ordinance shall be filed or allowed more than 2 years after the date such wages became due and payable under the agreement.

Section 7. Sovereign Immunity

7.01 This Ordinance provides for a limited waiver of sovereign immunity only to jurisdiction of the Tribal Court over wage claims and remedies provided by this Ordinance and no other claims or remedies. This Ordinance shall not be construed or interpreted to grant jurisdiction to any other Court over the Tribe, its Departments or entities or individuals acting in their official Tribal Capacity. Nothing in the Ordinance shall be construed to be a waiver of any Tribal sovereign immunity except as specifically provided in this Ordinance.

C E R T I F I C A T I O N

I, the undersigned, as Chairman of the Hoopa Valley Tribal Council, do hereby certify that the Hoopa Valley Tribal Council is composed of eight (8) members of which seven (7) were present, constituting a quorum by Regular Meeting thereof; duly and regularly called, noticed and adopted by a vote of five (5) in favor, one (1) opposed and zero (0) abstaining, the Chairman not voting, and that said Ordinance has not been rescinded or amended or modified in any way.

Dated this 7th day of March, 2002

Clifford Lyle Marshall, Sr. Chairman
Hoopa Valley Tribal Council

Attest: _____
Darcy Baldy, Executive Secretary
Hoopa Valley Tribal Council